

@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2261 of 1997
with
CIVIL APPLICATION No 8676 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 NO

BIHARI P PANDYA

Versus

ASSISTANT GENERAL MANAGER

Appearance:

1. Special Civil Application No. 2261 of 1997
MR JV JAPEE for Petitioner No. 1
M/S TRIVEDI & GUPTA for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 04/11/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the

Constitution is filed by the workman against the respondent-employer-bank which was ordered to appoint the petitioner as a peon after the order of his dismissal was converted into an order of simple discharge by the judgment of the Central Industrial Tribunal in Reference (ITC) No.9 of 1993. The operative portion of that order in the copy which is annexed with the petition reads as under:-

"The order of dismissal passed against said employee Shri Pandya is declared as severe and harsh punishment. Therefore, it is lawful, reasonable and proper to convert the order into simple discharge. The first party Bank is hereby ordered that, the previous service of the said employee should be considered as continued service and should be appointed as a peon, and also be given salary on that basis. The first party Bank will make implement of this order within 30 days from the date of this order."

Although the judgment and order as above is not a certified true copy and no certified true copy is filed in more than seven years of pendency of this petition, the order as above is certified as "True Copy" by putting the signature below the above order.

2. It is the case of the petitioner that he was originally appointed as a clerk in 1970 and promoted to the post of teller in the year 1986. A departmental inquiry was initiated against him and he was placed under suspension in the year 1987 and upon being found guilty, penalty of discharge from service was imposed in August, 1988. Upon raising an industrial dispute, the award and order as above is stated to have been passed on 22.6.1995. That award having not been challenged by either party, the petitioner was posted in service by order dated 7.8.1995. Upon representation being made by the petitioner, his pay was fixed by giving continuity of 18 years service. The main grievance of the petitioner appears to be that the respondents have treated the petitioner as a fresh appointee from 7.8.1995 for all other purposes except fixing of pay. As one of the consequences, the petitioner was likely to lose his chance for being considered for promotion and for appearing in the written test held for that purpose. In such circumstances, by order dated 2.5.1997 while admitting the petition, the petitioner was granted interim relief by way of a direction that he shall be allowed to appear in the promotion tests which were to be held for Godown Keeper-cum-Cashier on 11.5.1997 or as and

when the same were to be held in future. It was stated at the Bar that the petitioner was accordingly allowed to appear and had failed.

3. As for the other prayers flowing from the order below the award admittedly depended upon reading or interpretation of the order, the text of which, as reproduced hereinabove, was admittedly an incorrect copy. If there were any ambiguity or accidental mistake in the award or order, the petitioner should have and ought to have approached the Central Industrial Tribunal with appropriate application. In absence of a certified true copy of the original correct version of the order, it would not be proper for this Court to embark upon an enquiry as to whether the respondents had correctly implemented the order. On the other hand if the respondents were not fully implementing the award, petition under Article 226 is not the appropriate remedy for such grievance and the petitioner can take recourse to the alternative remedies available to him under the Industrial Disputes Act. It is regrettable that despite pendency of this petition for more than seven years in the Court and despite sufficient opportunities being granted to the learned counsel, neither certified true copy of the award relied upon by the petitioner is produced nor any worthwhile assistance is rendered. In such circumstances, it will not be proper to make any observation or express even a prima facie opinion about the correct interpretation of the order as reproduced hereinabove. The petition is, therefore, rejected with liberty to the petitioner to take appropriate alternative remedies and Rule is discharged with no order as to costs. Civil Application is disposed of as rejected in view of the order made in the main Special Civil Application today.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)